



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

RIN 2700-AE30

[Document Number NASA-17-039]

[Docket Number – NASA-2017-0002]

Implementation of the Federal Civil Penalties Inflation Adjustment Act

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim final rule with request for public comment.

SUMMARY: The National Aeronautics and Space Administration (NASA) is publishing for public comment an interim final rule to adjust the civil monetary penalties within its jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act or the Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The revision to this rule is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open Government Web site at <http://www.nasa.gov/open/>.

DATES: This interim final rule is effective [INSERT DATE OF 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358-0216.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.¹ Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the Federal Register.² Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.³ The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

II. Method of Calculation

The Inflation Adjustment Act prescribes a specific method for calculating the inflation adjustments.⁴ As amended by the 2015 Act, the Act provides that the maximum (and minimum, if applicable) amounts for each civil penalty must be increased by the “cost-of-living adjustment,” a term that the Act defines. For purposes of the initial adjustments that agencies must make by July 1, 2016, the “cost-of-living adjustment” is defined as the percentage increase in the Consumer Price Index between (1) October of the calendar year during which the civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act and (2) October 2015. The Consumer Price Index to be used for purposes of this

¹ See 28 U.S.C. 2461 note.

² The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. NASA has chosen not to make use of this exception.

³ Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

⁴ Inflation Adjustment Act section 5, *codified at* 28 U.S.C. 2461 note.

calculation is the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.⁵ The Office of Management and Budget (OMB) has published guidance for implementing this requirement.⁶ OMB's guidance memorandum provides multipliers that agencies should use to adjust penalty amounts based on the year the penalty was established or last adjusted under authority other than the Inflation Adjustment Act.

To determine the new penalty amount, the agency must apply the multiplier reflecting the “cost-of-living adjustment”⁷ to the penalty amount as it was most recently established or adjusted under a provision of law other than the Inflation Adjustment Act. The agency must then round that amount to the nearest dollar.⁸ The increase made by this initial adjustment may not exceed 150 percent of the penalty amount in effect on the date the 2015 Act was enacted, November 2, 2015.

III. Description of the Interim Final Rule.

This interim final rule establishes the inflation-adjusted maximum amounts for each civil penalty within NASA’s jurisdiction. The following table lists the civil penalties within NASA’s jurisdiction and summarizes the relevant information needed to calculate the inflation adjustments pursuant to the statutory method.

⁵ U.S. Dep’t of Labor, Bureau of Labor Statistics, CPI Tables, <http://www.bls.gov/cpi/#tables>.

⁶ Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

⁷ The multipliers reflecting the “cost-of-living adjustment” that OMB provides are rounded to five decimal places. NASA has used the OMB multipliers in calculating its civil penalty adjustments.

⁸ In rounding to the nearest dollar, NASA has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

Law	Penalty Description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	Penalty amount in effect on November 2, 2015
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for false claims	\$5000	1986	\$5000
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts	\$10000	1989	\$10000
Department of the Interior and Related Agencies	Maximum Penalty for use of appropriated	\$100000	1989	\$100000

Appropriations Act of 1989, P.L. 101-121, sec. 319	funds to lobby or influence certain contracts			
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Minimum penalty for failure to report certain lobbying transactions	\$10000	1989	\$10000
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Maximum penalty for failure to report certain lobbying transactions	\$100000	1989	\$100000

NASA followed the procedure outlined above in part II to calculate the adjusted civil penalty amounts. In accordance with the statutory requirements and OMB guidance, NASA multiplied each penalty amount as established or last adjusted under a provision other than the Inflation Adjustment Act by the OMB multiplier corresponding to the appropriate year, and then rounded

that amount to the nearest dollar, to calculate the new, inflation-adjusted civil penalty amount.

The following chart summarizes the results of these calculations:

Law	Penalty Description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB “cost-of-living adjustment” multiplier	New penalty amount	New Penalty Amount adjusted for 150% threshold
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for False Claims	\$5000	1986	2.15628	\$10781	\$10781
Department of the Interior and Related Agencies	Minimum Penalty for use of	\$10,000	1989	1.89361	\$18936	\$18936

Appropriations Act of 1989, P.L. 101-121, sec. 319	appropriated funds to lobby or influence certain contracts					
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts	\$100,000	1989	1.89361	\$189,36 1	\$189361
Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Minimum penalty for failure to report certain lobbying transactions	\$10,000	1989	1.89361	\$18,936	\$18936

Department of the Interior and Related Agencies Appropriations Act of 1989, P.L. 101-121, sec. 319	Maximum penalty for failure to report certain lobbying transactions	\$100,000	1989	1.89361	\$189,361	\$189361
--	---	-----------	------	---------	-----------	----------

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

IV. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,⁹ as amended by the Debt Collection Improvement Act of 1996,¹⁰ and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,¹¹ which requires NASA to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.¹² This rule satisfies that requirement.

⁹ Public Law 101-410, 104 Stat. 890 (1990).

¹⁰ Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373 (1996).

¹¹ Public Law 114-74, section 701, 129 Stat. 584, 599 (2015).

¹² See 5 U.S.C. 533(d).

V. Request for Comment

Although notice and comment rulemaking procedures are not required, NASA invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

VI. Regulatory Requirements

Notice and Comment

Under the APA, notice and opportunity for public comment are not required if NASA finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹³

This interim final rule adjusts the civil penalty amounts within the NASA's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amendments in this interim final rule are technical, and they merely apply the statutory method for adjusting civil penalty amounts. For these reasons, NASA has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Moreover, the statute expressly requires NASA to make these initial adjustments through an interim final rulemaking to be published by July 1, 2016,¹⁴ and OMB's guidance confirms that agencies need not complete a notice-and-comment process before promulgating the rule.¹⁵ Therefore, the amendments are adopted in final form.

¹³ 5 U.S.C. 533(b)(B).

¹⁴ Inflation Adjustment Action, section 4(b)(1)(A), *codified at* 28 U.S.C. 2461 note.

¹⁵ Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies 3 (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.¹⁶

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹⁷ NASA reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Penalties, Lobbying.

For the reasons stated in the preamble, the National Aeronautics and Space Administration amends 14 CFR parts 1264 and 1271 as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.102 [Amended]

2. In § 1264.102, paragraphs (a) and (b), remove the number “\$5,000” and add in its place the number “\$10,781”.

PART 1271—NEW RESTRICTIONS ON LOBBYING

3. The authority citation for part 1271 continues to read as follows:

¹⁶ 5 U.S.C. 603(a), 604(a).

¹⁷ 44 U.S.C. 3506-.

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); Pub. L. 97-258 (31 U.S.C. 6301 *et seq.*)

Subpart D—Penalties and Enforcement

§ 1271.400 [Amended]

4. In § 1271.400:

- a. In paragraphs (a) and (b), remove the words “not less than \$10,000 and not more than \$100,000” and add in their place the words “not less than \$18,936 and not more than \$189,361”; and
- b. In paragraph (e), remove the two occurrences of “\$10,000” and add in their places “\$18,936” and remove “\$100,000” and add in its place “\$189,361”.

Appendix A to Part 1271 [Amended]

6. In appendix A to part 1271, in paragraph following paragraph (3) and in the last paragraph of the appendix, remove the words “not less than \$10,000 and not more than \$100,000” and add in their place the words “not less than \$18,936 and not more than \$189,361”.

Cheryl E. Parker

NASA Federal Register Liaison Officer.

[FR Doc. 2017-13209 Filed: 6/23/2017 8:45 am; Publication Date: 6/26/2017]